

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 1484 OF 2020
IN
SUIT NO. 167 OF 2013**

ANJALI
TUSHAR
ASWALE

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Irfan H. Farooqui & Ors ..Applicants/Orig. Plaintiffs

Versus

Kifayatullah S/o Ahmedulla
Farooqui & Ors ..Defendants

Mr. Ranjeev Carvalvo, with Ms. Sneha Vani Marjadi,
Advocates for the Applicants in I.A.1484/20 in S.167/13
and for Defendant Nos.2 to 4 in S.1611/12.

Mr.Aseem Naphade i/b Jatin Sheth, Advocates for
the Applicants in IAL.1806/23 in S.1611/12 and for
Defendant Nos.1 to4 in S.167/13.

Mr. Bimal Mohamedi i/b Bellator Legal Services LLP,
Advocates for Defendant No.5 in S.167/13.

Mr. Ziyad Madon, Advocate for the Magnum Unit B Co-
op Hsg Soc Ltd.

CORAM : B. P. COLABAWALLA, J
DATE : APRIL 20, 2023

P.C.

The above Interim Application is filed seeking the
following reliefs:-

*“(a) that pending the hearing and final disposal of the
suit, the Court Receiver, High Court, Bombay, or any
other fit and proper person(s) be appointed Receiver of
the suit premises, as described in the Plaint, with all*

powers under Order XL Rule 1 of the Code of Civil Procedure, 1908;

(b) that an Architect and/or a Structural Engineer on the panel of This Honourable Court be appointed as a Court Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure with powers and authorities to visit the suit premises, as described in greater detail in the Plaint, and submit a Report to This Honourable Court with regard to all the works of additions and alterations that the Defendant No.1 to 4 (a/w Defendant No. 6 and 7) have carried out in and over the suit premises or any part thereof, the type of materials used in carrying out the said illegal construction and also to cause photographs of the same to be taken;

(c) that on the receipt of the Court Commissioner's Report, the Defendant No.1 to 4 (aw Defendant No. 6 & 7) be Ordered and Directed to remove and/or cause to remove and/or demolish and/or cause to demolish all the illegal constructions that have been carried out by them in and over the suit premises under the supervision of the Court Commissioner and/or the Court Receiver and thereby restore the status and the position of the suit premises as it existed on the day of the filing of the suit;

(d) that pending the hearing and final disposal of the Suit, the Defendant No.1 to 4 (aw Defendant No. 6 & 7), their servants and agents and all those claiming through and under them, be restrained by an Order and Injunction of This Honourable Court from carrying out any further works of additions and alterations of any nature whatsoever in and over the suit premises, described in greater detail in the Plaint, or any part thereof;

(e) that the Defendant No.1 to 4 (aw Defendant No. 6 & 7) be Ordered and Directed to pay to the Magnum Unit B Co-operative Housing Society a sum of Rs. 35,31,379/- (Rupees Thirty Five lakhs Thirty One Thousand Three Hundred Seventy Nine Only), being the amount of Bill No. 15 dated 1st December, 2019, and continue to go on paying the quarterly maintenance of Rs. 10,500/- (Rupees Ten Thousand Five Hundred Only) for and on behalf of the Applicants (Org. Plaintiffs);

(f) that the Defendant No.1 to 4 (aw Defendant No. 6 & 7) be Ordered and Directed to pay to the Applicants (Org. Plaintiff), compensation of Rs. 2,00,000/- per month from the date of the suit till the disposal of the suit;"

2 When this matter had come up on 10th March, 2023, I had noted that there appears to be a dispute regarding payment of the maintenance charges of Magnum Unit B Co-op Hsg Soc Ltd. On the said date, Mr. Naphade, the learned counsel appearing on behalf of Defendant Nos.1 to 4 (the Contesting Defendants) submitted that the said Defendants sought to make payment of the maintenance charges in relation to the ground floor of the Suit property to the said Society but it was not accepted as there is a dispute going on between the Plaintiffs and the Defendants. On that date, it was submitted that notwithstanding the aforesaid, Defendant Nos.1 to 4 were in talks with the Society regarding the quantum of the arrears of maintenance and he was hopeful that the same may be resolved. Thereafter, the matter came up on 30th

March, 2023. On the said date, to assist this Court, Mr. Ziyad Madon, an advocate of this Court, was appointed to appear on behalf of the Society. He graciously accepted the same. In order to enable him to take necessary instructions from the Society, the matter was adjourned to 13th April, 2023. Since the matter did not reach on that date, the same has stand over to 17th April, 2023 when also it did not reach. It has finally reached today.

3 Today, when the matter is called out, the parties before me have agreed that an amount of Rs.9,89,308/- is due and payable as arrears of the Society up to 31st March, 2023. The parties have further agreed that these dues shall be paid by Defendant Nos.1 to 4 to the Society which the Society will accept without prejudice to the rights and contentions of the Plaintiff.

4 In these circumstances, it is agreed that the amount of Rs.9,89,308/- shall be paid by Defendant Nos.1 to 4 to Magnum Unit-B Co-op Hsg. Society towards arrears of the Society's dues up to 31st March, 2023 within a period of two weeks from today. It is made clear that if the aforesaid payment is not paid within the stipulated time, then, the Society shall be entitled to charge

interest @ 21% p.a. (simple interest) from the date of default till payment and/or realization.

5 It is further directed that all future maintenance charges dues of the Society shall also be paid regularly by Defendant Nos.1 to 4 without any default within a period of 15 days of the Society raising their bills in that regard and intimating the same to Defendant Nos.1 to 4. These directions take care of prayer clause (e) of the above Interim Application.

6 In light of this order, Mr. Carvalho, the learned counsel appearing on behalf of the Plaintiffs, has stated on instructions, that he is not pressing for any of the other reliefs in the above Interim Application at this stage. In light of this statement, no other reliefs are granted to the Plaintiffs at this stage and the above Interim Application is accordingly disposed of.

7 This Court expresses its gratitude to Mr. Ziyad Madon who has been extremely helpful in resolving this dispute.

8 It is made clear that Defendant Nos.1 to 4 will not claim any equities by virtue of the fact that they have paid and/or

continue to pay the maintenance charges dues of the Society in relation to the ground floor of the Suit property.

9 Place the above Suit along with Suit No.1611 of 2012 on Board for directions on 27th April, 2023.

10 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[B. P. COLABAWALLA, J].